

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF TRUMPET ISLAND SALMON FARM FOR RENEWAL OF AN AQUACULTURE LEASE LOCATED EAST OF HARDWOOD ISLAND IN BLUE HILL BAY, TREMONT, HANCOCK COUNTY, MAINE)))))))	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
--	---------------------------------	--

On July 18, 2002 Trumpet Island Salmon Farm of Mount Desert, Maine applied for the renewal of an aquaculture lease to raise Atlantic salmon, rainbow trout and blue mussels totaling 25 acres in the coastal waters of the State of Maine, located east of Hardwood Island in Blue Hill Bay in Tremont, Hancock County, Maine. The applicant requested a ten-year renewal, to March 25, 2013. Public hearings on this application were held on August 5, 2003 in Bass Harbor, August 6, 2003 in Southwest Harbor, and January 12, 2004 in Tremont. Intervenor status was granted to Friends of Blue Hill Bay (hereafter referred to as FOBHB), represented by Sean Mahoney, Conservation Law Foundation (hereafter referred to as CLF), represented by Roger Fleming, and Eliot and Linda Paine.

Applications for aquaculture lease renewals are governed by 12 M.R.S.A. §6072(12) and Chapter 2.45 of the Department's rules, which provide that an aquaculture lease shall be renewed if the lessee has complied with the lease agreement during its term; the Commissioner determines that renewal of the lease is in the best interest of the state; the renewal will not cause the lessee to be a tenant of any kind in leases covering an aggregate of more than 300 acres¹; and the lease is not being held for speculative purposes.

¹ Pursuant to 12 M.R.S.A. §6072-A(13-A), the Commissioner may authorize a person to exceed the 300 acre limit, up to a maximum of 500 acres, provided that no more than 300 acres are "non-fallowed" at any time.

Evidence Introduced Concerning the Nature
and Impact of the Proposed Lease

The evidentiary record before the Department regarding this renewal application includes the Department files and the record of the August 4, 5 and 6, 2003 and January 12, 2004 public hearings². At the public hearings, testimony was given by the applicant, Erick Swanson, the Department's Aquaculture Environmental Coordinator, Jon Lewis, the Department's Director of Ecology, John Sowles, Charlie Todd of the Maine Department of Inland Fisheries and Wildlife, David Manski of the National Park Service, Intervenor FOBHB, Intervenor CLF, Intervenor Eliot Paine, Intervenor Linda Paine, representatives of Maine Coast Heritage Trust (intervenor in the August 4, 2003 hearing for Acadia Aquaculture) and several members of the public.

Erick Swanson, the president of Trumpet Island Salmon Farm, (hereafter referred to as the applicant), provided written and oral testimony regarding his request to renew the lease. He testified that he grows Atlantic salmon in a twelve-cage steel pen system. According to the applicant, he plans to replace the feeding barge on the lease site with a 90-ton, low profile feeding barge, called the Akva Master. The height of the barge would be 11 feet, as compared to the 24-foot height of the existing building on the site. There are other structures associated with the operations that are moored off-site and are used on the lease site, such as service barges, crew boats and a net roller. The applicant testified that he grows one year-class on the site, at a density of 28,000 fish per cage, or 336,000 fish. He stated that the number of smolts stocked at the site is approved by the Department through smolt transfer permits. According to the applicant, the total amount of feed necessary for 336,000 fish is 1,864 metric tons, of which one-third is dispersed in the smolt year and the remaining two-thirds in the market year. He testified that he uses best management practices at the lease site.

² On August 4, 2003, the Department held a hearing on the application of Acadia Aquaculture for an aquaculture lease located east of Tinker Island in Blue Hill Bay. The president of Trumpet Island Salmon Farm, Erick Swanson, is also the president of Acadia Aquaculture. FOBHB and CLF intervened in both hearings. In order to avoid repetitious testimony at the August 5th hearing, the Department indicated that

The applicant testified regarding his 10-year operational history on the lease site. In response to questions, the applicant acknowledged that he failed to satisfy certain provisions of his lease by allowing his bond to lapse and by paying his rental fee late. He stated that on several occasions the bond was issued on time, but not sent to the Department. The applicant testified that his gear has been located outside of the lease boundaries, but that it was a result of a difference in GPS technology, and that he has since corrected this discrepancy. In response to questions regarding the shooting of seals, the applicant denied shooting seals illegally. The applicant testified that he applied for and was granted a species amendment to his lease in order to grow mussels on his lease. However, in regard to the mussel rafts that are located on the lease site, he testified that he has never owned a mussel raft and the rafts on his lease belong to someone else. He stated that he has no responsibility for the rafts. The applicant also testified that he has used the beach on Hardwood Island, but that he stopped several years ago at the request of the landowners.

The applicant testified regarding the environmental impacts of the lease activities. He stated that benthic impacts are caused by excess feed and mussel drop-off caused by net cleaning on the site. The applicant testified that he is achieving recovery at the site by learning how to avoid excess feed and by no longer cleaning the nets on the lease site. He stated that he agreed with the information in the Finfish Aquaculture Monitoring Program (FAMP) reports regarding benthic impacts at the lease site, and that he changed his operations in 2000 in response to those reports. He testified that in November of 2001, the Department found unacceptable conditions at the lease site and he was required to submit a remediation plan. The applicant submitted the remediation plan to the Department in December of 2001 and, in it, set forth the changes that were made to date at the site and further changes to be made that included site rotation, managing feeding to eliminate excess feed and year class separation. According to the applicant, benthic conditions at the lease site have significantly improved since the implementation of this plan. The applicant testified that crabs thrive at the lease site.

the record of the August 4th hearing would be made part of the record for decision for the Trumpet Island

Fishing is allowed in the open areas of the lease site, and, according to the applicant, crab fishermen fish on the lease site. Additionally, the applicant testified that the pen system serves as a floating reef, attracting large schools of fish and that harbor porpoises and ospreys feed on the fish.

The applicant testified regarding his relationship with Heritage Salmon Company. He stated that he has secured loans and credit lines from Heritage, using equipment, inventory and personal signature for collateral. The applicant borrows against an operating line to cover payroll, insurances, maintenance and repairs, and payments to lenders; and has credit lines for smolts, feed and other services from Heritage. According to the applicant, he has loans from other financial institutions that financed some of the equipment. The applicant testified that Heritage exerts influence in the same manner as another lender would, thus the applicant must operate lawfully and not place their credit line at unnecessary risk. According to the applicant, if the farm is not in compliance with legal requirements, or his management of the farm places the loans at unnecessary risk, then Heritage can call in the loan or decline to continue with existing credit lines. Heritage has a first security position on equipment and other property financed by them and second position on assets financed by others. The applicant testified that Heritage pays the penny per pound tax to the Department on his behalf and charges his account. Heritage also submits monthly reports to the Department on his behalf. According to the applicant, Jody Patterson, the site manager at the lease site, is an employee of Heritage and is also on the applicant's payroll. The cost to Heritage to employ Mr. Patterson is charged to the applicant's account. The applicant testified that Mr. Patterson reports weekly feed numbers, water temperature and mortality to Heritage. According to the applicant, Mr. Patterson's role is to provide comfort to an important creditor. The applicant stated that he has the authority to fire Mr. Patterson, with the assumption that Heritage would find a replacement. In addition to Mr. Patterson, the applicant stated that other Heritage employees have worked at the lease site including a contract veterinarian and a team of contract divers hired by Heritage to assist with

the superchill problem last winter. Heritage buys the fish that are grown on the lease site. According to the applicant, Heritage contracts with a harvest vessel to harvest the fish. Heritage pays market value for the fish.

The Department's Aquaculture Environmental Coordinator (AEC) provided written and oral testimony regarding the renewal application. The AEC testified that the Department monitors finfish aquaculture lease sites through the FAMP program by reviewing water quality information, diver video surveys taken in the spring and fall, and sediment cores taken by the divers. The AEC stated that he has been with the department since 1997 and provided a summary of his observations of the applicant's lease operations during that time. According to the AEC, in 1997, the operations consisted of polar circles, which were not state-of-the-art. In the fall of 2000, several changes were made to the lease operations. The polar circles were replaced by steel cages, a new feed system was used, cameras were installed to monitor the feed, a net roller was purchased so that nets no longer needed to be washed on site, and a new crew was hired. The AEC testified that in the fall of 2001, the Department sent a letter to the applicant because the Department found unacceptable benthic conditions at the site. The Department informed the applicant that he was required to relocate the cages within the lease boundaries and submit a remediation plan, and that the Department was going to limit the number of fish on the site to 350,000. The AEC testified that there is some expectation of ecological impacts with the operation of a salmon farm and the Department monitors the farms for unacceptable conditions. According to the AEC, unacceptable conditions are those in which the organic load is beyond that which the ecology of the area could assimilate. The AEC stated that there have been significant improvements in environmental impacts at the applicant's lease site. He testified that the fall 2002 FAMP video showed improvements and the spring 2003 FAMP video shows a site that looks good. According to the AEC, the spring 2003 FAMP video showed improved conditions in that there was no mussel drop-off and no food pellets. The AEC recognized that the cages have not been in the new position for very long, but he stated that although the cages were moved north in the summer of 2002, the southern end of the cage

system remains over old bottom and there were no signs of additional loading. He also recognized that because of superchill that occurred that winter, there weren't many fish on the site.³

The AEC responded to questions regarding specific findings in the FAMP reports. The AEC explained that the response of benthic infauna is delayed. A video may show feed, bacterial mats, anoxic conditions and gassing, but these visual cues occur faster than the benthic infauna response. According to the AEC, benthic infauna response is also delayed when conditions are removed. Thus, the video may not show feed or anoxic conditions, but the benthic infauna will recover slower. The AEC stated that change in the biological world takes time. The AEC testified that the applicant's lease site is a success.

Charlie Todd, a biologist from the Maine Department of Inland Fisheries and Wildlife (IF&W), provided testimony regarding an eagle's nest on Hardwood Island. He testified that the eagles have been observed on Hardwood Island since 1995 and are monitored by 2-3 overflights per year. The Hardwood Island eagles are loyal to their nest and have a 44% success rate. He testified, however, that in the spring of 2003, the nest was unsuccessful. Mr. Todd testified that a renewal of the lease should restrict the use of the shore of Hardwood Island. He stated that IF&W only reviews new projects and that renewal of an existing lease would not fall under Essential Habitat review.

David Manski of the National Park Service testified regarding the lease renewal. He testified that the Park Service has a conservation easement on Hardwood Island. Mr. Manski testified that he has met with the applicant and that the Park Service and the applicant have entered into an agreement that will protect their conservation interests by reducing and/or mitigating to the degree possible noise, light and debris impacts. Mr. Manski submitted a signed copy of the agreement for the record and requested that it be incorporated into a renewal decision.

³ On July 26, 2004, the record was reopened to allow the submission of the Fall 2003 and Spring 2004 FAMP videos and reports into the record. The Fall 2003 video shows some light to moderate beggiatoa

Donald Eley, the president of FOBHB, provided written and oral testimony regarding the renewal application. Mr. Eley testified that the applicant's lease operations are a spit and polish looking farm today, but the Department should look to the applicant's entire operational history. He stated that the FAMP has consistently documented unacceptable benthic and water quality impacts at the lease site. Mr. Eley referred to the FAMP reports from Fall 1996 to Spring 2002 that note the presence of sediment and debris from net cleaning, deteriorating feces and food, Beggiatoa mats and patches, anoxic sediments and conditions and discarded nets and other garbage. He testified that the applicant has failed to comply with the terms of his lease, Department regulations, and other applicable laws by using riparian property, exceeding the lease boundaries, subleasing the lease site, failing to adequately mark the lease site and submitting late annual reports, insurance bonds and lease rental fees. Mr. Eley also testified that the lease site is likely to have an adverse impact on a pair of nesting eagles on Hardwood Island and the possibility of escapement of farmed salmon poses a threat to the wild Atlantic salmon.

Intervenor CLF, represented by Roger Fleming, provided written and oral testimony regarding the renewal application. Mr. Fleming testified that the lease should not be renewed because the applicant has not complied with the lease agreement, the aquaculture lease regulations or other applicable laws during the previous term of the lease. According to Mr. Fleming, the applicant was noncompliant in the following instances: failing to timely submit a species amendment form; allowing the insurance bond to lapse; shooting seals; stocking fish in excess of approved numbers; failing to timely submit annual lease reports; exceeding lease boundaries; operating the lease site in a manner that results in unacceptable levels of benthic degradation; and submitting a late and returned rental fee check. Additionally, Mr. Fleming testified that renewal of the lease is not in the best interest of the state because the existing lease has demonstrated a history of unreasonable environmental impacts.

at the southern edge of the pen system. The Spring 2004 video shows remnant patches of old and degrading beggiatoa.

Intervenors Eliot and Linda Paine provided written and oral testimony regarding the proposed lease. Mr. Paine testified that they have owned Hardwood Island since 1968. He stated that they have a good relationship with the applicant. According to Mr. Paine, there has been a tremendous reduction in noise at the lease site. He stated that in the beginning of the lease operations, there was a very loud generator, but the noise has been reduced. According to Mr. Paine, the area between low and high tide was used by the applicant and debris ended up above the high tide line. However, he testified that in the fall of 2000 everything was cleaned up. Mr. Paine requested that a new lease be conditioned upon no use of the beach on Hardwood Island. Mrs. Paine presented photographs of the beach area of Hardwood Island that contained debris. She testified that the pictures were taken in 2000, and that the area now looks very good. She stated that things have improved tremendously at the site, but that she would prefer that the site be moved to the northwest corner of the island.

William Robertson, East Coast Director of Operations for Heritage Salmon Company, provided testimony regarding the relationship between the applicant and Heritage. Mr. Robertson testified that the applicant is a client of Heritage. According to Mr. Robertson, Heritage provides working capital loans to the applicant and provides smolts, feed and periodic technical support. The working capital loans pay for smolts, feed and day-to-day operations, such as payroll, oil, etc. Heritage charges interest on the loans. He explained that in the spring, the applicant meets with Heritage, where they discuss the upcoming year and negotiate an annual budget, number of fish and operating protocols. According to Mr. Robertson, the applicant purchases smolts from Heritage. The money used to purchase the smolts is through a loan from Heritage. Mr. Robertson stated that the applicant is free to purchase smolts elsewhere, but would not be able to borrow money from Heritage to do so. After the smolts are purchased, the applicant grows the fish on the lease site. The applicant receives money from Heritage monthly in order to cover operating expenses. According to Mr. Robertson, the applicant provides regular updates to Heritage on the status of the fish. The timing of the harvest of fish is negotiated between the applicant and Heritage. According to Mr. Robertson,

Heritage harvests the fish and buys the fish from the applicant at fair market value. Heritage pays the penny per pound tax to the Department on behalf of the applicant. Heritage gets a sales commission and processing fee and the rest of the proceeds are sent to the applicant. The applicant then settles with Heritage on the money owed to Heritage for smolts, feed and operating expenses. Mr. Robertson testified that the applicant could sell the fish to a different company, but would still have to pay Heritage back for the loans. He stated that not every loan is paid in full and that a balance is carried over.

Mr. Robertson testified that the applicant owns the fish that are grown on the lease site. He testified that the applicant decides the number of smolts to purchase and determines the diet for the fish. However, according to Mr. Robertson, the applicant is required to follow standard protocols that are developed by Heritage based on the regulations. According to Mr. Robertson, the applicant selects and pays the employees of Trumpet Island Salmon Farm and determines their salaries. Mr. Robertson testified that the applicant is responsible for the debts of Trumpet Island Salmon Farm and when the applicant has the fish he is responsible for the risk of loss and is required to carry insurance. According to Mr. Robertson, Heritage is the loss payee to the extent necessary to cover the loans. Additionally, the applicant pays for the required insurance bond for the lease site.

According to Mr. Robertson, Heritage has a security interest in the fish and a security interest in some of the equipment on the site. In order to protect that security, Heritage provides technical support to ensure the health and production of the fish. That technical support is provided through the site manager, Jody Patterson, and the veterinarian. Mr. Robertson testified that Mr. Patterson, the site manager at the applicant's lease site, is an employee of Heritage Salmon, but 100% of the cost to employ Mr. Patterson is charged back to the applicant. Mr. Patterson negotiates his salary with Heritage at his annual site manager review, similar to other Heritage site managers. Additionally, Heritage pays for Mr. Patterson's benefits, which is also charged to the applicant. Mr. Patterson reports to the applicant on a day-to-day basis and to David Morang at Heritage regarding the inventory and how well the fish are

performing. According to Mr. Robertson, Heritage is interested in receiving this information because the fish represent collateral for the loan and they are interested in purchasing the fish. Mr. Robertson testified that the veterinarian is a contract employee paid for by the applicant through a loan from Heritage. Other contract employees include the harvest boat captain and divers.

According to Mr. Robertson, the applicant does not have a reporting relationship to anyone at Heritage. However, the applicant is in contact with the accounting staff. Additionally, the applicant reports to the inventory manager for Heritage on a weekly basis, and the inventory manager then submits that information to the Department in the required monthly reports. Mr. Robertson further testified that Heritage does not have any stock in Trumpet Island Salmon Farm or related entities; Heritage does not have a seat on the board of directors of Trumpet Island Salmon Farm; and there is no form of joint venture agreement between the applicant and Heritage.

Mr. Robertson testified regarding the relationship between Heritage and two other companies holding aquaculture leases that were recently purchased by Heritage. He stated that prior to the purchase there was very little difference between the relationship Heritage has with the applicant and the relationship it had with the other two companies. After the purchase, the companies became corporate entities and the employees are on the Heritage payroll. Additionally, after the purchase the farm operations remain the same, the staff is the same, but the decisions are made by a different person.

Jody Patterson, the site manager at the lease site, testified regarding his employment. Mr. Patterson stated that he was approached by Heritage about working at the applicant's lease site because the applicant was looking for expertise with the new system he was installing. Mr. Patterson began working at the applicant's lease site in October of 2000 and is still working there today. He began as a general manager and was then hired by the applicant as the site manager. Mr. Patterson testified that he receives a salary and benefits from Heritage and he also receives a salary from the applicant, over and above what Heritage pays. According to Mr.

Patterson, his job responsibilities include overseeing the day-to-day operations at the lease site. He reports to the applicant daily and reports to Heritage weekly. The weekly reports to Heritage include the inventory reports to the inventory manager and reports to David Morang regarding how the fish are doing and other information about the operations. Mr. Patterson testified that he provides information regarding the fish and feed because Heritage likes a certain feed conversion ratio. He stated that he attends meetings of Heritage site managers twice per year. Mr. Patterson testified that the applicant makes all of the decisions regarding the day-to-day operations on the lease site, such as dive frequency, feeding and depth of cameras. If Mr. Patterson disagrees with the applicant, he does not have the ability to overrule the applicant's decision.

Several members of the public testified in opposition to salmon farming in Blue Hill Bay. The Department also received numerous letters from members of the public opposing the lease renewal.

Findings of Fact

The applicant did not comply with certain provisions of the lease agreement during its term, including late submission of rental payments and insurance bond paperwork, exceeding lease boundaries and using the shore of Hardwood Island. Each of these instances of noncompliance were resolved. The number of smolts stocked at the lease site was approved by the Department through the smolt transfer permits obtained by the applicant prior to stocking. Although the applicant's lease activities at the lease site did result in unacceptable benthic impacts, the applicant acted promptly to submit a remediation plan and take action when he received a notice from Department. The site has shown signs of recovery in recent FAMP videos⁴ and the environmental conditions of the lease site are improving.⁵ Finally, with regard to the mussel rafts on the lease site, the applicant applied for and obtained an amendment to his lease allowing the applicant to grow mussels on his lease site. Although mussels are grown on

⁴ The most recent Fall 2003 and Spring 2004 FAMP videos are consistent with a site that is improving.

his lease site, the mussel rafts are not operated by the applicant, but rather by another individual. The applicant repeatedly denied any responsibility for the mussel rafts on his lease site. Subleasing is not permitted on the lease site. Therefore, mussel rafts that are not owned and operated by the applicant must be removed from the lease site as soon as possible. Based upon the evidence in the record, I find that although the applicant failed to comply with certain provisions of the lease agreement, those failures were cured to the satisfaction of the Department. Further, taking into consideration the nature of the non-compliance, the applicant's efforts to cure its non-compliance, and the demonstrated improvement of the benthic impacts at the lease site resulting from improvements made by the applicant in its management practices, I find that the applicant's non-compliance is not such that a lease renewal should be denied on this basis.

In determining whether the lease is being held for speculative purposes, the Department looks to whether substantially no aquaculture or research has been conducted on the lease site. The record shows that the applicant has operated a salmon farm at the lease site on an ongoing basis. Accordingly, substantial aquaculture has been conducted on the lease site over the term of the lease. Therefore, I find that the lease is not being held for speculative purposes.

In determining whether it is in the best interest of state to renew the lease, the Department takes into consideration, among other things, the potential for conflict with other new or existing uses of the area which the Commissioner determines to be a higher use of the area from the perspective of the public interest.⁶ There is an eagles' nest located on Hardwood Island that has coexisted with the lease operations since 1995. There has been a recent nest failure for unknown reasons. In order to minimize the impact of the lease activities on the

⁵ The applicant will be required to obtain a Maine Pollutant Discharge Elimination System permit from the Maine DEP. The permit sets standards of water quality that the applicant must achieve in conducting his lease operations.

⁶ FOBHB argued that the Department should consider an applicant's pattern of personal behavior in determining whether it is in the best interests of the State to renew a lease. In support of this argument, FOBHB made an offer of proof that the applicant engaged in conduct that included personal insults and expletives. The Department did not find the matters contained in the offer of proof to be material to its determination whether the renewal of the applicant's lease was in the best interests of the State of Maine and denied its admission into the record on that basis. Mr. Swanson's personal behaviors are not, under the circumstances of this case, pertinent to the lease renewal criteria.

eagles, the applicant shall not use the shore of Hardwood Island above the low water mark. Based on the evidence in the record, including the fact that environmental conditions are improving at the site, I find that the lease activities do not conflict with other new or existing higher uses of the area, and that it is in the best interest of the State to renew the lease.

The applicant holds no other aquaculture leases. Therefore, the renewal will not cause the applicant to be a tenant of any kind in leases covering an aggregate of more than 300 acres. However, the applicant has a relationship with Heritage Salmon Company in relation to his operations at the lease site. The issue, therefore, is whether that relationship is such that Heritage Salmon is a "tenant of any kind" under this lease in accordance with 12 M.R.S.A. § 6072(12)(D) and, if so, whether that determination results in Heritage being a tenant of any kind in leases covering an aggregate of more than 300 acres.

The evidence indicates that Heritage is significantly involved with the applicant's farming operations. The site manager is a Heritage employee who reports to Heritage concerning operations at the site, including information concerning weekly feed numbers, water temperature and mortality. While the applicant testified that he had the ability to fire the site manager, he assumes that Heritage could replace that person with another site manager. The applicant is required to follow standard protocols that are developed by Heritage based on the regulations. The applicant reports to Heritage's inventory manager on a weekly basis. Heritage submits the monthly reports to the Department on the applicant's behalf. Heritage buys the fish that are grown on the lease site, contracts with a harvest vessel to harvest the fish, and pays the penny per pound tax to the Department at the time the fish are harvested. The applicant receives money from Heritage monthly in order to cover operating expenses. Not every loan from Heritage to the applicant is paid in full and a balance is carried over. Heritage has had a similar relationship two other companies holding aquaculture leases besides the applicant that were recently purchased by Heritage. After the purchase of those entities, the farm operations have remained the same, the staff is the same, but the decisions are made by a different

person. Based on this, as well as other evidence on the record, I find that Heritage's relationship with the applicant is such that it is a tenant with respect to this lease.⁷

Currently, Heritage leases 224.147 acres in the State of Maine. The additional 25 acres that this lease encompasses gives them an aggregate of 249.147 acres. Accordingly, I find that this lease renewal will not cause the lessee, or Heritage Salmon Company to be a tenant of any kind in leases covering an aggregate of more than 300 acres.

Conclusions of Law

Based on the above findings, I conclude that the applicant has met the requirements for the renewal of an aquaculture lease set forth in 12 M.R.S.A. §6072.

Decision

The Commissioner of Marine Resources grants the application of Trumpet Island Salmon Farm for renewal of the 25-acre aquaculture lease located in Blue Hill Bay, Tremont, Maine, for a period of ten years, to March 25, 2013. In the renewal of this lease, Trumpet Island Salmon Farm is subject to the same terms, conditions, and obligations as set forth in the original lease, and as set forth below.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

- (1) navigation, lobster and crab fishing and recreational boating and fishing shall be allowed in the open areas of the lease;
- (2) the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80;

⁷ This finding is made solely for the purpose of determining whether the aggregate acreage held by Heritage Salmon exceeds that amount allowable under the aquaculture leasing statutes and is not intended in any way to suggest that Heritage is a tenant for any other purpose, statute, regulation, or common law liability.

- (3) all mussel rafts not owned or operated by the leaseholder shall be removed from the lease site as soon as possible;
- (4) no generators shall be operated at night during the summer months;
- (5) the leaseholder shall not use the shore of Hardwood Island, above the low water mark, in relation to the aquaculture activities, and shall remove all debris resulting from the lease operations from the surrounding waters and shores; and
- (6) the leaseholder shall obtain a Maine Pollutant Discharge Elimination System Permit from the Maine DEP prior to stocking a new year-class at the lease site.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources